

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LEA REICH on behalf of herself and  
all others similarly situated

Plaintiff,

1:15-cv-07195-SJ-RML

-against-

MIDLAND CREDIT MANAGEMENT, INC.,  
MIDLAND FUNDING, LLC,  
AND ENCORE CAPITAL GROUP, INC.

Defendants.

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***Plaintiff's Affidavit***

1. I, Lea Reich, am the Plaintiff, and class representative of the punitive class, in this lawsuit against Midland Credit Management, Inc. ("Midland").
2. I have personal knowledge of the facts and events stated herein and I am competent to testify thereto.
3. This affidavit is in opposition to the motion made by Midland to Compel Arbitration in this case.
4. In December of 2003, I visited a *Banana Republic* store and applied for a *Banana Republic* credit card, in order to obtain a discount on the clothing I was buying.
5. I made use of this *Banana Republic* credit card from 2003 until 2007.
6. In December of 2007, I was sent a letter stating that the regular *Banana Republic* Credit card program was ending on December 31, 2007 and that my regular *Banana Republic* Credit card was going to be automatically upgraded to a *Banana Republic* Visa account.

7. The letter sent to me in December of 2007, advising me that my *Banana Republic* Credit card program was ending, did not contain any new terms and conditions; although it did inform me that I would not lose my *Banana Republic* Credit card rewards.
8. I had not requested that my regular *Banana Republic* Credit card be converted into a *Banana Republic* Visa account.
9. Once the regular *Banana Republic* Credit card program had ended, the *Banana Republic* Credit Card was automatically upgraded to a *Banana Republic* Visa account.
10. In the beginning of January 2008, I received my new *Banana Republic* visa card ending in 4112. Yet, all that came in that envelope was the new *Banana Republic* Visa Credit Card with a sticker that stated that I need to call to activate.
11. The new *Banana Republic* Visa card ending in 4112 came with no new rewards information, nor did it come with any new credit card agreement or terms and conditions.
12. After receiving my new *Banana Republic* Visa card ending in 4112, I called the number on the sticker and activated my card. I also confirmed with the representative that my prior rewards from *Banana Republic* credit card were in fact transferred to my new *Banana Republic* Visa card ending in 4112.
13. I was also told that nothing changed in my *Banana Republic* credit card other than the fact that now it had the benefit of being a Visa.
14. At no point after receipt of my *Banana Republic* Visa card ending in 4112, did I receive any new rewards information or terms and conditions.
15. I used my *Banana Republic* Visa card ending in 4112 from January of 2008 until July of 2008, at which point I saw a fraudulent charge of around \$1,900.00 on my *Banana Republic* Visa card ending in 4112. I immediately called and reported the fraudulent charges. *Banana*

*Republic Visa* closed my Visa Credit Card ending in 4112, and sent me a new *Banana Republic Visa* card.

16. Sometime in July of 2008, after my *Banana Republic Visa* card ending in 4112 had been closed, I received my new *Banana Republic Visa* card ending 8020 as a replacement of *Banana Republic Visa* card ending in 4112.

17. The new *Banana Republic Visa* card ending in 8020 was a replacement card and it came with no new rewards information nor did it come with any new terms and conditions.

18. I did not request the upgrade rather the regular *Banana Republic Credit* card program had ended and the *Banana Republic Credit Card* was automatically upgraded to a *Banana Republic Visa* account.

19. The new *Banana Republic Visa* account did not end in 8020 but rather ended in 4112.

20. The new *Banana Republic Visa* account ending in 4112 was sent in the beginning of January, 2008 not on March 10, 2008.

21. The *Banana Republic Visa* account ending in 8020 which replaced the account ending in 4112 was not sent on March 10, 2008 rather it was only sent after July 2008.

22. It is impossible that the *Banana Republic Visa* account ending in 8020 was mailed out on March 10, 2008

23. This agreement was not sent in June 2012 and I never received this agreement in June 2012 or at any other time prior to seeing the motion to compel.

24. Midland then goes on to quote a portion of the change of terms for a Gap Inc Visa card which they say is the agreement that is relevant to this instant motion.

25. As mentioned above Midlands's records do not include a date in June, 2012 when this agreement was sent. The reason they don't provide a date for when this "change in the terms

of the account” was sent out is because this is yet again another complete fabrication a “change in the terms of the account” was never sent nor received.

26. Midland admits they don’t know the date that the “change in terms for the account” was sent, yet Midland has attempted to produce a copy of that supposed “change in terms of the account”, This agreement is a fictitious sample of a *Gap, Inc.* Visa Credit Card account agreement that has nothing to do with me as I never has a Gap Inc. Visa Credit Card
27. It is undisputed that I have never had a *Gap, Inc.* Visa Credit Card. I have only had a *Banana Republic* Visa card.
28. This supposed copy of the change in terms of the account is not dated and the motion to compel admittedly does not contain a date when it was sent. But most importantly, this agreement attached is for a *Gap, Inc.* Visa Credit Card despite the fact that it is undisputed that I have never had a *Gap, Inc.* Visa Credit Card. This agreement is a complete falsehood and it unbelievable on its face.
29. I never received any *Gap, Inc.* Visa account agreement in June of 2012.
30. The sample *Gap, Inc.* Visa account-agreement attached to Midland’s motion to compel states (Section III) "This is an Agreement for your Credit Card shown above."
31. In addition -to the fact that Midland admits that they don’t know the date when this agreement was sent- I have never received such an agreement and I never had any *Gap, Inc.* Visa Credit Card. Ironically the motion to compel is most importantly missing the initial letter or cover page that would contain the *Gap, Inc.* Visa Credit Card number shown above.
32. This generic undated sample copy of a fictitious "*Gap, Inc.* Visa Credit Card account agreement" that lacks a cover page with a Credit Card number, even if I would have received it and overlooked it, any such agreement is a nullity since I never had a *Gap, Inc.* Visa Credit

Card and I would not have -and could not have- assented to its terms.

33. As mentioned above, I never received any Credit Card agreement when I received my *Banana Republic* Visa Credit Card ending in 4112 or 8020.

34. The only agreement that binds me to my *Banana Republic* Visa Credit Card ending in 4112 or 8020 is the original agreement signed on December 21 2003.

35. The original December 21 2003 agreement did not contain any arbitration requirement.

36. The original agreement did not contain a provision that stated that I would be subject to change in the terms notices mailed to me.

37. Furthermore, I have never contracted with Midland, nor did I agree to arbitrate any dispute that I have with Midland. I did not know, nor could I have known, that Midland would claim that I had waived my rights.

38. Midland has failed to produce the only agreement that binds me to my *Banana Republic* Visa Credit Card 4112 and 8020 which is the original card member agreement and application signed on December 21 2003.

39. Midland does not and cannot have first-hand knowledge of the facts yet with exhaustive effort it has in fact manufactured documents and facts that on their face are irredeemably false, self-contradictory and very troubling.

Dated: Cedarhurst, New York  
August 1, 2016

Lea Reich



8/1/16

JOEL ROSENZWEIG  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RO6285729  
Qualified in Kings County  
My Commission Expires July 08, 2017

